

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In re:)	Case No. 15-41404-705
)	
GREEN JACOBSON, P.C.,)	Hon. Charles E. Rendlen
)	
Debtor.)	Chapter 7
)	
)	Hearing Date: December 18, 2018
)	Hearing Time: 10:00 a.m.
)	Objection Deadline: December 14, 2018
)	

**AMENDED EMERGENCY MOTION FOR ORDER APPROVING DISTRIBUTION TO
SKMDV HOLDINGS, INC. FROM QUALIFIED SETTLEMENT FUND**

COMES NOW SKMDV Holdings, Inc. ("SKMDV"), by and through undersigned counsel, and hereby files this *Motion for Order Approving Distribution To SKMDV Holdings, Inc. From Qualified Settlement Fund* (the "Motion"). In support of the Motion, SKMDV states as follows:

JURISDICTION AND VENUE AND BASES FOR RELIEF

1. This Court has subject matter jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334 and Rule 81-9.01(B)(1) of the Local Rules of the United States District Court for the Eastern District of Missouri. This is a core proceeding pursuant to 28 U.S.C. §157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The bases for the relief requested in the Motion are sections 105(a) of title 11 of the United States Code (the "Bankruptcy Code") and Rule 3009 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

PARTIES

3. Green Jacobson, P.C. ("Green Jacobson" or the "Debtor") was a law firm based in Clayton, Missouri.

4. On March 3, 2015 (the “Petition Date”), SKMDV filed an involuntary petition in bankruptcy against Green Jacobson. Green Jacobson thereafter consented to an order of relief under Chapter 7 of the United States Bankruptcy Code. David A. Sosne (the “Chapter 7 Trustee”) was appointed Chapter 7 Trustee in Green Jacobson’s case on April 16, 2015.

5. On July 6, 1999, David P. Oetting (“Oetting”) was appointed one of the class representatives for the Plaintiff class in multidistrict litigation styled *In re BankAmerica Corp. Securities Litigation*, Case No. 99-MDL-1264 (E.D. Mo.). Oetting has described himself in a pleading before this Court as “the only remaining class representative that is either still alive or shows any interest in [the case].”¹ Green Jacobson was, at one time, counsel of record for the NationsBank Class.

OETTING CLAIM

6. On May 20, 2015, Oetting filed Claim No. 1-1 in this case for \$10,503,914.70. On October 6, 2016, Oetting filed an amended claim 1-2 in the same amount. This claim shall be referred to as the “Oetting Claim”.

7. The Chapter 7 Trustee objected to the Oetting Claim. On November 29, 2016, this Court sustained the Trustee’s objection to the Oetting Claim. (ECF No. 338) Oetting appealed to the District Court, and, on July 21, 2017, the District Court affirmed the Bankruptcy Court. In re Green Jacobson, P.C., 2017 WL 2666158 (June 21, 2017 E.D. Mo.). After Oetting’s motion for reconsideration was denied, Oetting appealed to the United States Court of Appeals for the Eighth Circuit. The appeal is fully briefed and the Eighth Circuit declined to hear oral argument, but it has not yet ruled.

¹ See Motion for Relief from Automatic Stay (ECF No. 8) filed on March 17, 2015, at p. 1.

8. As a result of the foregoing, the Oetting Claim has still not been resolved with a final order.

SKMDV CLAIM

9. As the Court is aware, SKMDV's claim is based on a prepetition judgment against the Debtor in the amount of \$10,500,000. The judgment was affirmed by the Missouri Court of Appeals and the Missouri Supreme Court. SKMDV held security for a portion of its allowed claim and it has already realized on its collateral. After accounting for its collateral and before including any interim distributions made by the Chapter 7 Trustee, SKMDV's unsecured claim against the Debtor was \$7,954,351.08.

QUALIFIED SETTLEMENT FUND

10. In late 2017, Congress passed tax legislation that eliminated net operating loss ("NOL") carrybacks for all tax years beginning on January 1, 2018. In order to permit the Green Jacobson estate to maximize its NOL carrybacks before the law changed, on December 19, 2017, this Court entered an order (ECF No. 493) authorizing the establishment of a Qualified Settlement Fund ("QSF") into which \$2,500,000 could be deposited and held for the benefit of Oetting and SKMDV, the two holders of allowed claims against the Debtor.²

11. Seth Albin was named the trustee (the "QSF Trustee") of the QSF pursuant to the Green Jacobson QSF Trust Agreement dated as of December 19, 2017 (the "QSF Trust Agreement"). Pursuant to Section 4.07 of the QSF Trust Agreement, the QSF Trustee may only make distributions to the beneficiaries pursuant to an order of this Court.

² All other unsecured creditors holding allowed claims have been paid pursuant to previous orders of the Court. The only remaining prepetition claims against the Debtor are held by SKMDV and Oetting. SKMDV's claim has been allowed. Oetting's claim has been disallowed but an appeal of that order is pending.

12. The QSF Trust presently holds almost \$2.8 million. Based on the balances in the QSF Trust alone, sufficient funds are reserved to fully catch-up on all payments on account of the Oetting Claim if it is ever allowed. In fact, the QSF Trust holds at least \$457,000 more than is needed to fully reserve for the Oetting Claim (the “Excess Reserve”).³

13. No purpose is served by the QSF Trustee continuing to hold such a large Excess Reserve so long as (i) the Oetting Claim is fully reserved, and (ii) an appropriate reserve is maintained for payment of expenses of administering the QSF Trustee. SKMDV requests the QSF Trustee be authorized to make a \$400,000 distribution to SKMDV before December 31, 2018 from the QSF Trust. The amount received from SKMDV will be applied to reduce its claim against Green Jacobson.

14. Distribution of up to \$400,000 to SKMDV will not harm Oetting because, in the unlikely event the Oetting Claim is hereafter allowed, sufficient funds will remain in the QSF Trust to pay all amounts due to Oetting. Furthermore, even if a distribution of up to \$400,000 is made to SKMDV, the QSF Trust will have more than sufficient funds to satisfy expected future fees and expenses of administering the QSF Trust.

³ These amounts exclude distributions to be made by the Chapter 7 Trustee in December of 2018 to the QSF Trust and directly to SKMDV. These distributions will not affect the amount of the Excess Reserve being held by the QSF Trust.

WHEREFORE, SKMDV respectfully requests this Court to enter its order granting the relief sought in the Motion, and for such other and further relief as is necessary.

Respectfully submitted,

THOMPSON COBURN LLP

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing instrument was e-filed and served through the Court's CM/ECF electronic mail noticing system on the attorneys of record on this the 7th day of December, 2018.

/s/ David A. Warfield